IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 178 of 2006.

Date of Decision: August 21, 2006.

Bilasi Ram .....Petitioner.

Versus

Bhanumagi .....Respondent.

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting[1]?

For the petitioner: Ms. Jyotsna Rewal Dua, Advocate.

For the respondent: Mr. K.S.Kanwar, Sr. Advocate, with Mr. Karan Singh Kanwar, Advocate.

V.K.Gupta, C.J. (Oral)

It is an open and shut case. Rent petition filed under Section 14 of the H.P. Urban Rent Control Act, 1987 was allowed by the learned Rent Controller vide the Order passed by him on 11.11.2003, in which *inter alia* he directed the petitioner - tenant to pay arrears of rent calculated @ Rs.800/- per month, from 1.3.1998 along with 9% interest thereupon and costs assessed at Rs.29.50. The amount of arrears of rent at the aforesaid rate of Rs.800/- per month for the total period of 68 months 10 days was calculated at Rs.54,666/-. Interest @ 9% on the aforesaid arrears

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

on a gradual scale of reduction was calculated at Rs.14,076/-. Adding to both, the amount of costs of Rs.29.50, the total amount due was calculated at Rs.68,771.50.

Mrs. Jyotsna Rewal Dua, learned counsel for the petitioner does not dispute the aforesaid calculations or the aforesaid total amount due. The Rent Controller in the impugned order records that the petitioner – tenant had deposited Rs.65,500/- and on that basis, the deposit fell short by Rs.3,271.50. The petitioner – tenant says that he had deposited Rs.66,500/-. Even if that is taken as true and correct, still the deposit fell short by Rs.2,271.50.

Third proviso to clause (i) of Sub-Section (2) of section 14 of the H.P. Rent Control Act, 1987 clearly enjoins upon the tenant against whom the Rent Controller has made an order for eviction on the ground of non payment of rent due from him, the statutory duty to pay the amount due within a period of 30 days from the date of order.

By now it is well established, in the light of the authoritative pronouncements by a Full Bench of this Court in the case of *Wazir Chand* vs. *Ambaka Rani and another*, reported in 2005 (2) Shim. L.C. 498, based upon and in the light of the ratio in the case of *Madam Mohan and another* vs. *Krishan Kumar Sood*, reported in 1994 Supp (1) Supreme Court Cases

437, that the expression "amount due" occurring in the aforesaid third proviso includes the arrears of rent, the interest thereupon @ 9% per annum and the amount of costs. It is also a well settled proposition of law by now that if the tenant fails to deposit the amount due within a period of 30 days from the date of the order, the only option available in law is to enforce the eviction order. Whether the shortfall is Re.1/- or the shortfall is more than Re.1/-, if there is any shortfall in the deposit of the amount, the eviction order has to be executed, because by not depositing the amount due in its entirety, the tenant forfeits the concession granted to him under the aforesaid third proviso and the only option thereafter is to execute the eviction order.

While interpreting the aforesaid third proviso in the light of the fact situation that there occurred a shortfall, howsoever small, in the matter of deposit of the amount due, the Court cannot take into consideration either any extenuating circumstance or any circumstance based upon leniency or amplitude or any other circumstance which may be based upon or linked with any compelling reason or reasons of difficulty or discomfiture. If there is a shortfall with respect to the deposit of the amount due within a period of 30 days or if the amount due has not been deposited within the aforesaid period of

30 days and even if the deposit is late by one day, concession granted under the aforesaid third proviso immediately goes away. There is no escape to that.

For the fore-going reasons, I am fully convinced that the learned Rent Controller by passing the impugned order has adopted a correct approach by applying the correct position of law which has been reiterated by me in this order. The petition is liable to be dismissed.

Looking to the peculiar facts and circumstances of the case, I however direct that the eviction order shall not be executed for a period of four months from today, subject to the following conditions:

(i) The petitioner shall file a written undertaking before the learned Rent Controller within one week from today in which it shall be mentioned that he shall vacate and hand over the vacant possession of the property in question to the respondent landlady before 21.12.2006.

(ii) The petitioner shall be paying to the respondent – landlady compensation for use and occupation of the property in question every month for the entire period of occupation from today onwards @ Rs.2000/- per month.

(iii) In so far as the compensation for use and occupation from November 2003 uptil today is concerned, he shall pay the arrears for this period @ Rs.800/- per month within four weeks from today.

(iv) If the petitioner defaults in any of the aforesaid, the eviction order shall become liable to be executed immediately and forthwith.

Copy dasti.

August 21, 2006 **(V.K.Gupta)**
PC. **Chief Justice.**